

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ERNEST BENAVENTE,

Plaintiff,

vs.

Civ. No.

21-00235 SMV

KILOLO KIJAKAZI,¹
Acting Commissioner of the Social Security
Administration,

Defendant.

**ORDER GRANTING UNOPPOSED MOTION FOR ATTORNEY FEES
PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT**

The Court, having reviewed the parties' Unopposed Motion for Attorney Fees Pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 (Doc. 26), HEREBY ORDERS that attorney fees be, and hereby are, awarded under the EAJA, payable to Plaintiff but mailed to Plaintiff's attorney in the amount of \$5,700.00 in attorney fees. *See Astrue v. Ratliff*, 560 U.S. 586 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED THAT, if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).



STEPHAN M. VIDMAR
UNITED STATES MAGISTRATE JUDGE

¹ Kilolo Kijakazi was appointed Acting Commissioner of the Social Security Administration on July 9, 2021.

SUBMITTED AND APPROVED BY:

Submitted on 3/21/22 by:

/s/ Laura J. Johnson

Laura J. Johnson

Attorney for Plaintiff

Michael Armstrong Law Office, LLC

Electronically Approved on 3/20/22 by:

/s/ Melissa Schuenemann

Melissa Schuenemann

Assistant Regional Counsel

Office of the General Counsel

Social Security Administration, Region VIII